

## STATE OF NORTH DAKOTA

## BOARD OF MEDICAL EXAMINERS

IN THE MATTER OF: \_\_\_\_\_)

Board of Medical Examiners, )

Complainant )

V. )

Kian K. Chang, M.D. )

Respondent. )

**RECOMMENDED  
FINDINGS OF FACT,  
CONCLUSIONS OF LAW,  
AND ORDER**

On August 10, 1999, a Complaint was filed with North Dakota Board of Medical Examiners (“Board”) by Special Assistant Attorney General John M. Olson, counsel for the Board, requesting administrative action against the license previously issued by the Board to Kian K. Chang, M.D. (“Dr. Chang”), License No. 3464, which granted him a license to practice medicine in the State of North Dakota. The Complaint cites as grounds for administrative action violations of N.D.C.C. § 43-17-31(16). The Complaint alleges that Dr. Chang committed acts of sexual abuse, misconduct or exploitation relating to the practice of medicine on several occasions in October 1998, and in May and June 1999. The Complaint also requested the Board to order an *ex parte* temporary suspension of Dr. Chang’s license pending a hearing on the Complaint, which suspension would remain in effect for 60 days. The Complaint cites “probable cause” of “harm to the public ... so imminent or critical that substantial harm would likely result if the respondent’s license is not suspended prior to a hearing...” On August 10, 1999, the Board issued its Ex Parte Order of Temporary Suspension suspending Dr. Chang from the practice of

medicine in North Dakota for 60 days. On August 10, 1999, the Board also issued a Notice of Hearing scheduling a hearing on the Complaint for September 15, 1999.

On August 16, 1999, the Board requested the designation of an administrative law judge (“ALJ”) from the Office of Administrative Hearings to conduct a hearing and to issue recommended findings of fact and conclusions of law, as well as a recommended order, in regard to this matter. On August 18, 1999, ALJ Allen C. Hoberg was designated. A copy of the designation letter was served on Dr. Chang.

On August 23, 1999, the Board issued an Amended Notice of Hearing. In that notice, the hearing was still scheduled for September 15.

On August 26, 1999, Chang’s attorney, Mr. Donald L. Peterson, Minot, North Dakota, wrote a letter to the North Dakota Commission on Medical Competency asking for a continuance for several reasons, expressing hope that “the investigation could be deferred until the facts are developed in the lawsuits.” He related that two civil suits had been commenced against Dr. Chang. He did not serve the ALJ with a copy of his letter. On August 30, 1999, Mr. Olson responded to Mr. Peterson asking Mr. Peterson to make his request to the ALJ. He suggested that a prehearing conference may be appropriate. He served a copy of his letter on the ALJ.

On September 3, 1999, the ALJ issued a Notice of Prehearing Conference scheduling a September 7, 1999, telephone prehearing conference. The prehearing conference was held as scheduled. It was attended by Mr. Olson and Mr. Peterson, as well as Dr. Chang and Mr. Rolf Sletten, the Board’s Executive Secretary and Treasurer. As a result of the prehearing conference, the Board and Dr. Chang entered into a Stipulation for Continuance and the ALJ continued the scheduled hearing. In the stipulation Dr. Chang agreed to not practice medicine and agreed to

extend the Board's temporary suspension of his license until this matter is concluded with the Board.

On September 21, 1999, Mr. Olson sent to Mr. Peterson the Board's entire investigative file on the Dr. Chang Complaint.

On September 27, 1999, the ALJ issued a Notice of Continued Hearing scheduling a January 19 and 20, 2000 hearing. The length and time of the hearing were agreed to by counsel. At the prehearing conference, counsel discussed Dr. Chang's request for a continuance. Dr. Chang initially requested a continuance so that the Board's hearing would not be held until the two civil lawsuits were completed. Mr. Olson resisted a continuance of that length and suggested a two-month continuance. Mr. Peterson expressed discovery concerns indicating that discovery would take longer. Then, counsel agreed to a two-day hearing scheduled for January 19 and 20. Later, on December 7, 1999, at the request of counsel, the ALJ issued a Prehearing Conference Summary – Submission of Witness lists and Exhibit lists. He summarized the prehearing conference. He required the parties to submit exhibit and witness lists by January 14, 2000.

On January 14, the ALJ received Dr. Chang's Exhibit and Witness List, a letter from Mr. Peterson indicating that "Dr. Chang may call himself as a witness." Along with that letter, the ALJ received Dr. Chang's Motion for Continuance and the Affidavit of Mr. Peterson. Although the situation had not really changed from the time of the prehearing conference, Dr. Chang, again citing discovery concerns, as well as concerns that material pertinent and germane to his defense to the allegations in the Complaint may be used against him in the two civil lawsuits and that the findings of the Board may be used against him in the lawsuits, again requested that the hearing be continued until the two civil lawsuits were completed. He offered

to agree to continue the temporary suspension against his license and to not practice medicine “until the lawsuits are resolved.”

On January 18, 2000, the ALJ received the Board’s Witness and Exhibit List. On that same day he also received the Board’s Return to Motion for Continuance and Affidavit of John M. Olson. The Board resisted a continuance in this matter, noting that it had supplied Dr. Chang with the contents of its investigative file in this matter and that the Board was prepared to go forward with its presentation of its case on January 19.

On January 18, 2000, the ALJ issued his Order Denying Continuance.

On January 19, 2000, the continued hearing was held. Mr. Olson appeared representing the Board. He presented the case against Dr. Chang calling three witnesses, Mr. Sletten, Mr. Greg Beauclair, Dr. Chang’s former patient, and Mr. Robert Balucki, Dr. Chang’s former patient, and offering only one exhibit, Dr. Chang’s Application for License, dated March 27, 1974, which included a picture of Dr. Chang. Dr. Chang did not appear at the hearing, though he is the Respondent to the Complaint in this matter and he was listed as a witness on both witness lists. Mr. Peterson did appear representing Dr. Chang. He indicated that he had no witnesses and no exhibits to present, but that he may cross-examine the Board’s witnesses. However, Mr. Peterson did not ask any questions of any of the Board’s witnesses.

Following the close of the evidentiary portion of the hearing, at the request of Mr. Peterson, the ALJ asked for written closing briefs.

On January 20, 2000, the ALJ received the letter brief of Mr. Olson. Because of the violations that the Board alleges are proven, Mr. Olson asks that Dr. Chang’s license “be permanently revoked.” On January 25, 2000, the ALJ received a very short letter brief from Mr. Peterson. In his brief, Mr. Peterson states that he realizes “... that your recommendation will

not be favorable to Dr. Chang.” He then asks that if “the lawsuits against Dr. Chang are resolved in his favor that he be given the opportunity to present further evidence which would enable a future North Dakota license.” On January 31, 2000, the ALJ received Mr. Olson’s response letter brief. Mr. Olson states “Dr. Chang was afforded full opportunity to appear.... He elected not to do so. There was no... request to continue the hearing....” He concludes that Dr. Chang’s opportunity to present further evidence be denied and that these administrative proceedings be concluded.” On February 2, 2000, the ALJ received another letter brief from Mr. Peterson. He states, “We are not requesting an additional hearing to present further evidence. We are simply asking that in the future should Dr. Chang be exonerated in the lawsuits that he be allowed to come back before the Board to perhaps regain his license.”

Based on the evidence presented at the hearing and the letter briefs of counsel, the administrative law judge makes the following recommended findings of fact and conclusions of law.

### **FINDINGS OF FACT**

1. At all times pertinent to the allegations of the Complaint, Dr. Chang was licensed by the Board to practice medicine in North Dakota. He was issued a license by the Board pursuant to his March 27, 1974, application and has been continuously licensed and practicing medicine in North Dakota ever since.

2. Dr. Chang’s specialty is General Surgery and Pediatric Surgery. Dr. Chang currently practices medicine in Minot, North Dakota.

3. On July 16, 1999, Trinity Medical Center (“TMC”) suspended Dr. Chang’s privileges to practice. On August 10, 1999, the Board temporarily suspended Dr. Chang’s license to practice medicine in North Dakota. That temporary suspension has been extended by

stipulation until the conclusion of this matter, *i.e.*, until the Board issues its final order in regard to the Complaint against Dr. Chang.

4. The evidence shows, by the greater weight of the evidence, that one time in June 1999, Dr. Chang impermissibly touched his patient, Mr. Beauclair, without Mr. Beauclair's permission, by fondling his penis, causing ejaculation of Mr. Beauclair's semen. This occurred during Mr. Beauclair's hospital stay at TMC. The purpose of Mr. Beauclair's hospitalization was for Dr. Chang to remove some cysts from Mr. Beauclair and for recovery from that surgery. During that same hospital stay, the evidence shows, Dr. Chang tried to kiss Mr. Beauclair on the lips several times. Mr. Beauclair refused or resisted each time, however, and Dr. Chang never actually touched Mr. Beauclair on his lips with his lips. During Mr. Beauclair's discharge from TMC, Dr. Chang inquired about visiting Mr. Beauclair at his home. Later, Dr. Chang called Mr. Beauclair at his home and told him to "zip his lip" and that "I will take care of you." Later, in Dr. Chang's office, when Dr. Chang was checking Mr. Beauclair's dressings from surgery, Dr. Chang started to pull a window curtain, though he and Beauclair were alone in the office. When Mr. Beauclair said that he should not do that, Dr. Chang said something to the effect that he was sad or sick about it. Mr. Beauclair identified Dr. Chang from his application photograph.

5. The evidence shows, by the greater weight of the evidence, that in October 1998 and May 1999, Dr. Chang impermissibly touched his patient, Mr. Balucki, without his permission, by fondling his penis, each time causing ejaculation of Mr. Balucki's semen. Mr. Balucki had seen Dr. Chang for hernia surgery in October 1998. Later in October, when Mr. Balucki came to Dr. Chang's office to have his stitches checked, Dr. Chang fondled his penis the first time. When Mr. Balucki asked why, Dr. Chang responded, "I'm testing." After that incident, Mr. Balucki did not want to see Dr. Chang again. However, later, after

Mr. Balucki got the shingles and he needed some medication, his nephew referred him to Dr. Chang when Mr. Balucki had difficulty getting the medication elsewhere at the time he wanted it. He, again, went to Dr. Chang's office in May 1999. In Dr. Chang's office, when the door was closed, Dr. Chang asked Mr. Balucki to lie on a table and to close his eyes. Dr. Chang then fondled Mr. Balucki's penis the second time. Although Dr. Chang asked Mr. Balucki to come back for another appointment, he has never returned to see Dr. Chang. Mr. Balucki identified Dr. Chang from his application photograph.

### **CONCLUSIONS OF LAW**

1. The evidence shows, by the greater weight of the evidence, that on three separate occasions Dr. Chang impermissibly touched two different patients without their permission. Each touching was impermissible sexual contact. The evidence further shows, by the greater weight of the evidence, that on several occasions Dr. Chang tried to impermissibly touch a patient without his permission. These several attempts to touch were impermissible attempts at sexual contact. The three separate occasions of impermissible touching and the several impermissible attempts to touch are all acts of sexual abuse, misconduct, or exploitation by Dr. Chang related to his practice of medicine in North Dakota, in violation of N.D.C.C. § 33-17-31(16).

2. N.D.C.C. §§ 43-17-30.1 and 43-17-31 authorize the Board to take disciplinary action in the form of revocation of a physician's license to practice medicine in North Dakota, or to take less serious administrative action, for any violation of N.D.C.C. § 43-17-31(16).

### **RECOMMENDED ORDER**

The greater weight of the evidence shows that Dr. Chang violated the provisions of N.D.C.C. § 43-17-31(16) as alleged in the Complaint. The Board's attorney recommends that permanent revocation of Dr. Chang's license is the appropriate disciplinary action for the violations that were proven. The ALJ agrees. Because of the violations of N.D.C.C. § 43-17-31(16) by Dr. Chang, the ALJ recommends that the Board order that his license to practice medicine in North Dakota, currently under temporary suspension, be REVOKED.

The ALJ declines to recommend whether the Board should consider any further action on this Complaint or the final order it issues in this matter as a result of any favorable disposition for Dr. Chang in pending civil litigation.

Dated at Bismarck, North Dakota, this 2nd day of February, 2000.

State of North Dakota  
Board of Medical Examiners

By: \_\_\_\_\_  
Allen C. Hoberg  
Administrative Law Judge  
Office of Administrative Hearings  
1707 North 9<sup>th</sup> Street - Lower Level  
Bismarck, North Dakota 58501-1882  
Telephone: (701) 328-3260